

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 9198 of 2004****For Approval and Signature:****HONOURABLE MR.JUSTICE AKIL KURESHI**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
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 - 5 Whether it is to be circulated to the civil judge ?

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GOPAL GLASS WORKS PVT. LTD. - Petitioner(s)
Versus
AMRATBHAI RAMABHAI PRAJAPATI - Respondent(s)

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Appearance :

MR DR BHATT for Petitioner(s) : 1,
MR DJ BHATT for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI**Date : 06/10/2005****ORAL JUDGMENT**

In the present petition, the petitioner-employer has challenged the legality of the award dated 29.11.03. By the impugned award, the reference of the respondent workman was allowed in part and his alleged termination

was set aside. He was ordered to be reinstated in service with 25 per cent backwages.

2. Before the Labour Court, the petitioner contended that the services of the respondent was never terminated and that he himself voluntarily stopped reporting for work with effect from 18.11.94. In fact, the petitioner wrote letters dated 28.11.94, 19.12.94 and 24.1.95 calling upon the respondent to resume duties. Before the Conciliation Officer also on 30.3.94, the petitioner suggested that the respondent can resume duty. The Labour Court did not accept the version of the petitioner stating that witnesses were not examined to prove that the respondent had proceeded on leave with effect from 18.11.94. However, considering the communication of the respondent to the petitioner that after his termination he got a job which pays him Rs.6,000/- per month as against the salary of Rs.2,000/- which he was drawing from the petitioner, the Labour Court provided for reinstatement with 25 per cent backwages.

3. The letters written by the petitioner to the respondent calling upon him to resume duty were exhibited before the Labour Court. These letters were, however,

not referred to by the Labour Court in its conclusions. When the petitioner wrote several letters and also suggested before the Conciliation Officer at the first available opportunity that it is open for the respondent to resume duty, the stand of the petitioner that respondent voluntarily abandoned service could not have been ignored. The additional factor is that the respondent himself during the pendency of the reference contended that he got alternative job which pays him three times his previous salary. Combined effect of these factors would be that the stand of the petitioner that the respondent had voluntarily abandoned the service ought to have been accepted. There was, therefore, no question of reinstatement with backwages even in part.

4. In the result, the petition is allowed. The impugned award is set aside. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)

(vjn)